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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/596,862

06/27/2006

Staffan Soderlund

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FASTH LAW OFFICES (ROLF FASTH)
26 PINECREST PLAZA, SUITE 2
SOUTHERN PINES, NC 28387-4301

EXAMINER

LIM, SENG HENG

ART UNIT

PAPER NUMBER

3714

MAIL DATE

DELIVERY MODE

12/09/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/596,862	Applicant(s) SODERLUND, STAFFAN	
	Examiner SENG H. LIM	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement filed 9/21/2006 fails to comply with 37 CFR 1.97(c) because it lacks a statement as specified in 37 CFR 1.97(e). It has been placed in the application file, but the information referred to therein has not been considered.

Claim Objections

Claim 1 is objected to because of the following informalities: in line 7, "brain wave" is spelled "brain waive". Appropriate correction is required.

Response to Amendment

This office action is in response to the amendment filed on 8/25/2008 in which applicant amends claim 1; added claims 8-9; and responds to the claim rejections. Claims 1-9 are pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-6, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brotz (US 5,213,338) in view of Ohlschlager (US 3,712,617).

Re claim 1, 4, 5, 6, 8 & 9. Brotz discloses a method of playing a game for two players (Abstract) comprising providing the two players each with a sensor (24 & 26: Fig. 2) for measuring brain wave intensity or frequency (4:6-35). Two players are seated opposite each other at the short sides of the playing area trying to move a game unit or illuminating square from their own side of the playing area to the other side (7:9-22). Whoever moves the gaming unit adjacent or to opponent's side of the playing area first wins. Brotz also discloses a game wherein the measured difference between two player's brainwave intensity or frequency is compared to move a game unit wherein the game unit is moved or rotated in the direction of the player producing the more intense brainwaves (claim 6).

Brotz does not disclose rolling a magnetic unit (i.e. ball) on top of the playing area in x or y direction; however, Ohlschlager discloses moving a ball through a maze by magnets under control of multiple players in x and y direction (Abstract). At the time of invention a person of ordinary skill in the art would have found it obvious to modify Brotz's method of rotating a playing area with Ohlschlager's method of rotating a playing area to move a magnetic ball through a maze and would have been motivated to do so to provide player enjoyment of a puzzle game.

Brotz and Ohlschlager disclose the claimed invention of moving a game unit and velocity/speed with measured brainwaves (Fig. 3) except for designating which range of frequency moves the gaming unit towards a designated direction. It would have been an obvious

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matter of design choice to designate which range of frequency moves the ball towards a designated direction.

Re claim 2. Brotz discloses floating the unit (202: Fig. 15) a constant distance (D) over the playing area (203: Fig. 15).

Re claim 3. Brotz discloses measuring theta wave, alpha wave and beta wave frequencies of the brains of the player (4:13-14).

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brotz (US 5,213,338) and Ohlschlager (US 3,712,617).as applied to claim 1 and further in view of McCaslin (US 4,332,385).

Brotz and Ohlschlager teach the invention substantially as claimed, but do not expressly disclose a method wherein a player loses the game by moving the game unit over a recess or losing direction. McCaslin discloses a method wherein a player loses the game by moving the game unit over a recess or losing direction (3:34-36). At the time of invention a person of ordinary skill in the art would have found it obvious to modify Brotz and Ohlschlager's method to include a recess or losing direction to make the game more challenging.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Please see attached USPTO form PTO-892.

Response to Arguments

Applicant's arguments filed 8/22/2008 have been fully considered but they are not persuasive.

Applicant argues that Brotz fails to teach comparing two relative inputs to produce movement of a game unit. The Examiner disagrees. Brotz also discloses a game wherein measured difference between two player's brainwave intensity is compared to move a game unit, wherein the game unit is moved or rotated in the direction of the player producing the more intense brainwaves (claim 6).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., requiring a player to be less stressed relative to his opponent in order to move the game unit in the x-direction) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Additionally, Brotz discloses that the device can be used for relaxation (1:40), hence reducing stress.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SENG H. LIM whose telephone number is (571)270-3301. The examiner can normally be reached on 9:30-6:00, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on 571-272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR

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system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Seng H Lim/

Examiner, Art Unit 3714

/Corbett Coburn/
Primary Examiner
AU 3714